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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/16-19

13
14 **DAVID'S SMOG TEST, INC.; EDMUNDO**
15 **DAVID ESPINOSA,**
16 **PRESIDENT/SECRETARY/TREASURER**
1828 E. 4th Street
Los Angeles, CA 90033

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17 Automotive Repair Dealer Registration No.
ARD 265807
18 Smog Check Test Only Station License No. TC
265807

19 **and**

20 **EDMUNDO DAVID ESPINOSA AKA**
21 **EDMUND DAVID ESPINOSA**
2357 N. Eastern Ave.
Los Angeles, CA 90032

23 Smog Check Inspector License No. EO 146409

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25 Respondents.

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FINDINGS OF FACT

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2 1. On or about August 24, 2015, Complainant Patrick Dorais, in his official capacity as
3 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
4 No. 79/16-19 against David's Smog Test, Inc.; Edmundo David Espinosa,
5 President/Secretary/Treasurer (Respondent David's Smog Test) and Edmundo David Espinosa
6 aka Edmund David Espinosa (Respondent Espinosa) before the Director of Consumer Affairs.
7 (Accusation attached as Exhibit A.)

8 2. On or about July 8, 2011, the Bureau of Automotive Repair (Bureau) issued
9 Automotive Repair Dealer Registration No. ARD 265807 to Respondent David's Smog Test.
10 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
11 charges brought in Accusation No. 79/16-19 and will expire on July 31, 2016, unless renewed.

12 3. On or about July 20, 2011, the Bureau issued Smog Check Test Only Station License
13 No. TC 265807 to Respondent David's Smog Test. The Smog Check Test Only Station License
14 was in full force and effect at all times relevant to the charges brought in Accusation No. 79/16-
15 19 and will expire on July 31, 2016, unless renewed.

16 4. In or about 2003, the Bureau issued Advanced Emission Specialist Technician
17 License No. EA 146409 to Respondent Espinosa. The technician license expired and was
18 cancelled on September 30, 2013. Effective September 30, 2013, the license was renewed, at
19 Respondent Espinosa's election, as Smog Check Inspector License Number EO 146409. The
20 Smog Check Inspector license was in full force and effect at all times relevant to the charges
21 brought in Accusation No. 79/16-19 and expired on September 30, 2015. This lapse in licensure,
22 however, pursuant to Business and Professions Code sections 118(b) and 9884.13 does not
23 deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

24 5. On or about September 2, 2015, Respondent Espinosa Smog Test was served by
25 Certified and First Class Mail copies of the Accusation No. 79/16-19, Statement to Respondent,
26 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
27 11507.5, 11507.6, and 11507.7) at Respondent Espinosa Smog Test's address of record which,
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1 pursuant to Business and Professions Code section 136, is required to be reported and maintained
2 with the Bureau. Respondent's address of record was and is:

3 1828 E. 4th Street
4 Los Angeles, CA 90033.

5 6. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 7. On or about September 2, 2015, Respondent Espinosa was served by Certified and
9 First Class Mail copies of the Accusation No. 79/16-19, Statement to Respondent, Notice of
10 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
11 11507.6, and 11507.7) at Respondent Espinosa's address of record which, pursuant to Business
12 and Professions Code section 136, is required to be reported and maintained with the Bureau.
13 Respondent's address of record was and is:

14 2357 N. Eastern Ave.
15 Los Angeles, CA 90032.

16 8. Service of the Accusation was effective as a matter of law under the provisions of
17 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
18 124.

19 9. On or about October 6, 2015, the certified mail envelope containing the
20 aforementioned documents was returned by the U.S. Postal Service marked "Unclaimed." The
21 address on the documents was the same as the address on file with the Bureau.

22 10. Government Code section 11506 states, in pertinent part:

23 (c) The respondent shall be entitled to a hearing on the merits if the respondent
24 files a notice of defense, and the notice shall be deemed a specific denial of all parts
25 of the accusation not expressly admitted. Failure to file a notice of defense shall
26 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
27 may nevertheless grant a hearing.

28 11. Respondents failed to file a Notice of Defense within 15 days after service upon them
of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.
79/16-19.

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12. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

13. Pursuant to its authority under Government Code section 11520, the Director after having reviewed the proof of service dated September 2, 2015, signed by Lisa M. Robinson, the returned certified mail envelope addressed to Respondent Espinosa, and the certified mail receipt addressed to Respondent David's Smog Test, finds Respondents are in default. The Director will take action without further hearing and, based on Accusation No. 79/16-19, proof of service, and on the Affidavit of Bureau Representative Robert S. Martin, finds that the allegations in the Accusation are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent David's Smog Test has subjected its Automotive Repair Dealer Registration No. ARD 265807 and its Smog Check Test Only Station License No. TC 265807 to discipline and Respondent Espinosa has subjected his Smog Check Inspector License No. EO 146409 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent David's Smog Test's Automotive Repair Dealer Registration and Smog Check Test Only Station License and Respondent Espinosa's Smog Check Inspector License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Robert S. Martin in this case:

a. Respondent David's Smog Test's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that it made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading.

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1 b. Respondent David's Smog Test's Automotive Repair Dealer Registration is subject to
2 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it
3 committed acts that constitute fraud.

4 c. Respondent David's Smog Test's Smog Check Test Only Station License is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that it
6 failed to comply with sections 44012 and 44015 of that Code.

7 d. Respondent David's Smog Test's Smog Check Test Only Station License is subject to
8 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that it
9 failed to comply with provisions of California Code of Regulations, title 16.

10 e. Respondent David's Smog Test's Smog Check Test Only Station License is subject to
11 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it
12 committed dishonest, fraudulent, or deceitful acts whereby another was injured.

13 f. Respondent Espinosa's Smog Check Inspector License is subject to disciplinary
14 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to
15 comply with section 44012 of that Code.

16 g. Respondent Espinosa's Smog Check Inspector License is subject to disciplinary
17 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to
18 comply with provisions of California Code of Regulations, title 16.

19 h. Respondent Espinosa's Smog Check Inspector License is subject to disciplinary
20 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed
21 dishonest, fraudulent, or deceitful acts whereby another was injured.

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1 ORDER

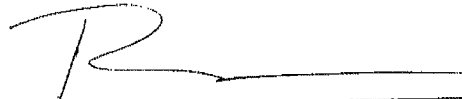
2 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 265807 and
3 Smog Check Test Only Station License No. TC 265807, heretofore issued to Respondent David's
4 Smog Test, Inc.; Edmundo David Espinosa, President/Secretary/Treasurer, are revoked.

5 IT IS FURTHER ORDERED that Smog Check Inspector License No. EO 146409,
6 heretofore issued to Respondent Edmundo David Espinosa aka Edmund David Espinosa, is
7 revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
11 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
12 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing
13 on a showing of good cause, as defined in the statute.

14 This Decision shall become effective on June 21, 2016.

15 It is so ORDERED July 30, 2016

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19 TAMARA COLSON
20 Assistant General Counsel
21 Division of Legal Affairs
22 Department of Consumer Affairs

23 61827955.DOC
24 DOJ Matter ID: LA2015500251

25 Attachment:
26 Exhibit A: Accusation
27
28

Exhibit A

Accusation

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2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
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Attorneys for Complainant
7

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/16-19

13 **DAVID'S SMOG TEST, INCORPORATED;**
EDMUNDO DAVID ESPINOSA,
14 **PRESIDENT/SECRETARY/TREASURER**
1828 E. 4th Street
15 Los Angeles, CA 90033

A C C U S A T I O N

(Smog Check)

16 Automotive Repair Dealer Registration No. ARD
265807
17 Smog Check Test Only Station License No. TC
265807

18 and

19 **EDMUNDO DAVID ESPINOSA AKA**
EDMUND DAVID ESPINOSA
20 2357 N. Eastern Ave.
21 Los Angeles, CA 90032

22 Smog Check Inspector License No. EO 146409
(formerly Advanced Emission Specialist
23 Technician License No. EA 146409)

24 Respondents.

25 Complainant alleges:

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1 PARTIES

2 1. Patrik Dorais (Complainant) brings this Accousation solely in his official capacity as
3 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

4 **David's Smog Test, Incorporated; Edmundo David Espinosa,**
5 **President/Secretary/Treasurer**

6 2. On or about July 8, 2011, the Bureau issued Automotive Repair Dealer Registration
7 Number ARD 265807 to David's Smog Test, Incorporated; Edmundo David Espinosa,
8 President/Secretary/Treasurer (Respondent David's Smog Test). The Automotive Repair Dealer
9 Registration was in full force and effect at all times relevant to the charges brought herein, and
10 will expire on July 31, 2016, unless renewed.

11 3. On or about July 20, 2011, the Bureau issued Smog Check-Test Only Station License
12 Number TC 265807 to Respondent David's Smog Test. The Smog Check Test Only Station.
13 License was in full force and effect at all times relevant to the charges brought herein, and will
14 expire on July 31, 2016, unless renewed.

15 **Edmundo David Espinosa**

16 4. In or about 2003, the Bureau issued Advanced Emission Specialist Technician
17 License No. EA 146409 to Edmundo David Espinosa (Respondent Espinosa). The technician
18 license expired and was cancelled on September 30, 2013. Effective September 30, 2013, the
19 license was renewed, at Respondent Espinosa's election, as Smog Check Inspector License
20 Number EO 146409. The Smog Check Inspector license was in full force and effect at all times
21 relevant to the charges brought herein, and will expire on September 30, 2015, unless renewed.¹

22 JURISDICTION

23 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
24 the Director may revoke an automotive repair dealer registration.

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(4) Any other conduct that constitutes fraud.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee."

1 "program," and "agency." "License" includes certificate, registration or other means to engage
2 in a business or profession regulated by the Bus. & Prof. Code.

3 11. Health & Saf. Code section 44072.2 states, in pertinent part:

4 The director may suspend, revoke, or take other disciplinary action
5 against a license as provided in this article if the licensee, or any partner, officer, or
6 director thereof, does any of the following:

7 (a) Violates any section of this chapter [the Motor Vehicle Inspection
8 Program (Health and Saf. Code § 44000, et seq.)) and the regulations adopted
9 pursuant to it, which related to the licensed activities.

10 (c) Violates any of the regulations adopted by the director pursuant to
11 this chapter.

12 (d) Commits any act involving dishonesty, fraud, or deceit whereby
13 another is injured . . .

14 12. Health & Saf. Code section 44072.10 states, in pertinent part:

15 (c) The department shall revoke the license of any smog check technician
16 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
17 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
18 the following:

19 (4) Intentional or willful violation of this chapter or any regulation,
20 standard, or procedure of the department implementing this chapter . . .

21 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or
22 suspended following a hearing under this article, any additional license issued under this chapter
23 in the name of the licensee may be likewise revoked or suspended by the director.

24 COST RECOVERY

25 14. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
26 the administrative law judge to direct a licensee found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

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1 VID DATA REVIEW

2 15. The Bureau initiated an investigation against David's Smog Test, Incorporated based
3 on a review of information from the Bureau's Vehicle Information Database (VID), which
4 indicated that Respondents may have engaged in fraudulent smog check activities.

5 16. As part of the investigation, Bureau representative Robert S. Martin downloaded test
6 data information from the VID for all smog tests conducted by David's Smog Test, Incorporated
7 for the periods of April 1, 2014 through June 30, 2014 and July 1, 2014 through September 22,
8 2014. The VID data revealed that the diagnostic trouble code P0507 was stored in the memory of
9 the power train control module of eight (8) different vehicles that were certified by Respondent
10 Espinosa on behalf of David's Smog Test, Incorporated during those time periods. After
11 researching the original equipment manufacturer (OEM) service information for these vehicles,
12 and after consulting Mitchell On-Demand and Alldata Information Systems, Bureau
13 representative Robert S. Martin determined that diagnostic trouble code P0507 was not applicable
14 to any of these vehicles and, therefore, that other vehicles had been used in place of these eight
15 (8) vehicles during their respective OBD II functional tests.² This fraudulent conduct constitutes
16 clean plugging.³ The following chart illustrates the documented clean plugging activities of
17 Respondents for the periods of April 1, 2014 through June 30, 2014 and July 1, 2014 through
18 September 22, 2014.

19

| Test Date and Time* | Vehicle Certified & License No. | Certificate No. | Details |
|-------------------------------------|------------------------------------|-----------------|--|
| 20 04/01/2014 21 1833-1843 hours | 1997 Honda Accord 4CEA393 | PG066786 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |

22 ² The On Board Diagnostics (OBD II) functional test is an automated function of the
23 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

26 ³ Clean plugging refers to the use of the OBD II readiness monitor status and stored fault
27 code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog
28 certificate to another vehicle that is not in compliance due to a failure to complete the minimum
number of self tests, known as monitors, or due to the presence of a stored fault code that
indicates an emission control system or component failure.

| | | | |
|-------------------------------|---|----------|--|
| 04/04/2014 1415-1427 hours | 1999 Lincoln Navigator 4DSV378 | PG066796 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |
| 08/04/2014 1019-1036 hours | 2001 Toyota Avalon 4PHA773 | PI746343 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |
| 08/20/2014 1733-1748 hours | 1997 Nissan Sentra 6BQW265 | PK030598 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |
| 08/20/2014 1754-1811 hours | 2006 Toyota Corolla 5POJ517 | PK030599 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |
| 08/30/2014 1247-1309 hours | 1998 Dodge Caravan 6KIB325 | PK304643 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |
| 09/12/2014 1623-1639 hours | 2001 Nissan Maxima VIN# JN1CA31DX1T632620 | PK488089 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |
| 09/12/2014 1644-1654 hours | 2002 Toyota Camry 4UNT388 | PK488090 | Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa. |

* Test times are in military time.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent David's Smog Test's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that it made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent David's Smog Test certified that the 8 vehicles identified in paragraph 16 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent David's Smog Test conducted the

1 inspections on the vehicles using clean-plugging methods in that he substituted or used a different
2 vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for
3 the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section
4 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 18. Respondent David's Smog Test's Automotive Repair Dealer Registration is subject to
8 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it
9 committed acts that constitute fraud by issuing electronic smog certificates of compliance for the
10 eight vehicles identified in paragraph 16 above, without performing bona fide inspections of the
11 emission control devices and systems on the vehicles, thereby depriving the People of the State of
12 California of the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Violations of the Motor Vehicle Inspection Program)**

15 19. Respondent David's Smog Test's Smog Check Test Only Station License is subject to
16 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that it
17 failed to comply with the following sections of that Code:

18 a. **Section 44012:** Respondent David's Smog Test failed to ensure that the emission
19 control tests were performed on the eight vehicles identified in paragraph 16 above, in accordance
20 with procedures prescribed by the department.

21 b. **Section 44015:** Respondent David's Smog Test issued electronic smog certificates of
22 compliance for the eight vehicles identified in paragraph 16 above, without ensuring that the
23 vehicles were properly tested and inspected to determine if they were in compliance with Health
24 & Saf. Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 20. Respondent David's Smog Test's Smog Check Test Only Station License is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that it
6 failed to comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c)**: Respondent David's Smog Test falsely or
8 fraudulently issued electronic smog certificates of compliance for the eight vehicles identified in
9 paragraph 16 above.

10 b. **Section 3340.35, subdivision (c)**: Respondent David's Smog Test issued electronic
11 smog certificates of compliance for the eight vehicles identified in paragraph 16 above, even
12 though the vehicles had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.42**: Respondent David's Smog Test failed to ensure that the required
14 smog tests were conducted on the eight vehicles identified in paragraph 16 above, in accordance
15 with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Dishonesty, Fraud or Deceit)**

18 21. Respondent David's Smog Test's Smog Check Test Only Station License is subject to
19 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it
20 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing
21 electronic smog certificates of compliance for the eight vehicles identified in paragraph 16 above,
22 without performing bona fide inspections of the emission control devices and systems on the
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program)**

3 22. Respondent Espinosa's Smog Check Inspector License is subject to disciplinary
4 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent
5 Espinosa failed to comply with section 44012 of that Code in a material respect, as follows:
6 Respondent Espinosa failed to perform the emission control tests on the eight vehicles identified
7 in paragraph 16 above, in accordance with procedures prescribed by the department.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations Pursuant**
10 **to the Motor Vehicle Inspection Program)**

11 23. Respondent Espinosa's Smog Check Inspector License is subject to disciplinary
12 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent
13 Espinosa failed to comply with provisions of California Code of Regulations, title 16, as follows:

14 a. **Section 3340.24, subdivision (c):** Respondent Espinosa falsely or fraudulently
15 issued electronic smog certificates of compliance for the eight vehicles identified in paragraph 16
16 above.

17 b. **Section 3340.30, subdivision (a):** Respondent Espinosa failed to inspect and test the
18 eight vehicles identified in paragraph 16 above, in accordance with Health & Saf. Code sections
19 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

20 c. **Section 3340.42:** Respondent Espinosa failed to conduct the required smog tests on
21 the eight vehicles identified in paragraph 16 above, in accordance with the Bureau's
22 specifications.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Dishonesty, Fraud or Deceit)**

25 24. Respondent Espinosa's Smog Check Inspector License is subject to disciplinary
26 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
27 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing
28 electronic smog certificates of compliance for the eight vehicles identified in paragraph 16 above,

1 without performing bona fide inspections of the emission control devices and systems on the
2 vehicles, thereby depriving the People of the State of California of the protection afforded by the
3 Motor Vehicle Inspection Program.

4 OTHER MATTERS

5 25. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
6 suspend, revoke, or place on probation the registration for all places of business operated in this
7 state by Respondent David's Smog Test, upon a finding that it has, or is, engaged in a course of
8 repeated and willful violations of the laws and regulations pertaining to an automotive repair
9 dealer.

10 26. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
11 License No. TC 265807, issued to Respondent David's Smog Test, is revoked or suspended, any
12 additional license issued under this chapter in the name of said licensee may be likewise revoked
13 or suspended by the director.

14 27. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
15 No. EO 146409, issued to Respondent Espinosa, is revoked or suspended, any additional license
16 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
17 the director.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Director of Consumer Affairs issue a decision:

21 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 265807,
22 issued to David's Smog Test, Incorporated; Edmundo David Espinosa,
23 President/Secretary/Treasurer;

24 2. Revoking or suspending any other automotive repair dealer registration issued to
25 David's Smog Test, Incorporated; Edmundo David Espinosa, President/Secretary/Treasurer;

26 3. Revoking or suspending Smog Check Test Only Station License No.
27 TC 265807, issued to David's Smog Test, Incorporated; Edmundo David Espinosa,
28 President/Secretary/Treasurer;

1 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of David's Smog Test, Incorporated; Edmundo David Espinosa,
3 President/Secretary/Treasurer;

4 6. Revoking or suspending Smog Check Inspector License No. EO 146409, issued to
5 Edmundo David Espinosa;

6 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
7 and Safety Code in the name of Edmundo David Espinosa;

8 9. Ordering David's Smog Test, Incorporated; Edmundo David Espinosa,
9 President/Secretary/Treasurer, and Edmundo David Espinosa to pay the Director of Consumer
10 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
11 Business and Professions Code section 125.3; and

12 10. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 8/24/15

Patrick Doraïs
PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

Doug Balatti
Assist. Chief

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